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No. 88-618

In the Supreme Court of the United States

OCTOBER TERM, 1988

GRANITE ROCK COMPANY, a Corporation,
Petitioner,

v.

BUILDING MATERIALS AND CONSTRUCTION
TEAMSTERS LOCAL 216,
Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR BUILDING MATERIALS AND CONSTRUCTION TEAMSTERS, LOCAL 216 IN OPPOSITION

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QUESTION PRESENTED

In affirming a federal district court's order directing arbitration of a dispute as to whether Plaintiff had violated an implied covenant in a collective bargaining agreement, the court below rejected Petitioner's contention that arbitration could not be directed in the absence of a judicial finding that there was a plausible basis in the agreement for the implied covenant. The question presented is whether the court below, in declining to inquire into the merits of the Respondent Union's interpretation of the agreement, conformed to established standards for determining arbitrability as reaffirmed by this Court in *AT&T Technologies, Inc. v. Communication Workers of America*, 475 U.S. 643 (1986).

TABLE OF CONTENTS

Page(s)

STATEMENT OF THE CASE 1

ARGUMENT 6

CONCLUSION 9

TABLE OF AUTHORITIES

Case — Page(s)

AT&T Technologies v. Communications Workers of America,
475 U.S. 643, 648 (1986) ..... i, 5, 7, 8

Montgomery Mailers Union No.127 v. Advertiser Company,
827 F.2d 709 (C.A.11, 1987) 8

Morristown Daily Record v. Graphic Communications Union Local 8N
832 F.2d 31 (C.A.3, 1987) 8

United Steelworkers v. American Manufacturing Company,
363 U.S. 564 (1960) 5, 6

United Steelworkers of America v. Warrior & Gulf Navigation Co.,
363 U.S. 574 (1960) 7

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STATEMENT OF THE CASE[1]

Petitioner Granite Rock Company, hereafter referred to as Granite, is located in Northern California where it is engaged in various business operations in the construction industry, including the manufacture and sale of readymix concrete (Pet. App.5). Granite and the Respondent Union are parties to the

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[1] Respondent is satisfied with the statements in the Petition relating to the Opinions Below, Jurisdiction, and the Statutory Provisions Involved (Pet., pp. 1-2), and accordingly this Opposition does not repeat the information there supplied. See Rule 34.1(d)(e) and (f) and Rule 34.2 of this Court's Rules of Practice.

same multi-employer, multi-union collective bargaining agreement, but during the events in this case Granite did not have a readymix operation within the Union's geographical jurisdiction (*ibid.*).

Granite is a family corporation. During the events in this case only one member of the family, Betsy Woolpert, was active in the business affairs of the corporation, whose shares were held by Ms. Woolpert, her husband, her two sons, and the estate of her sister (E.R. 238-240, 244).[2] In 1985 Granite's shareholders established a new readymix concrete operation in San Mateo County, California, which lies within the Union's jurisdiction (Pet. App.45). This was accomplished by the reactivation of a dormant corporation, called Central Supply Company, which had previously merged with Granite but at the time was inactive and without assets (*ibid.*). Shares of the reactivated corporation were issued in equal amounts to Granite's shareholders, and the new business, using the name Harbor Ready Mix, was capitalized through a bank loan secured by a line of credit guaranteed by Granite (Pet. App. 5, 45; E.R. 248-251).

After Harbor Ready Mix began operations the Union filed a grievance alleging that the new business was an alter ego of Granite, and that Granite had violated the collective bargaining agreement by not applying to it the economic and hiring provisions of the agreement and by not recognizing the Union as the representative of Harbor's employees (Pet. App.5-6). Granite refused to process the grievance, and filed

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[2] The symbol "E.R." refers to Excerpts of the Record prepared for the court below in accordance with its Rules. Facts described in the text of this Opposition for which "E.R." supporting references are made have not been disputed in the proceedings below, and accordingly Respondent has not requested that the relevant portions of the record be transmitted to this Court pursuant to Rule 19.1.

a unit clarification proceeding with the National Labor Relations Board, requesting a determination that Harbor's employees were not covered by the bargaining unit described by the agreement to which Granite and the Union were signatories (Pet. App.6). Shortly before the hearing in the Board case, the Union filed the complaint in the instant action, seeking to compel Granite to comply with the grievance and arbitration provisions of the collective bargaining agreement in order to resolve the grievance which it had filed (*ibid.*).

Before the issue in this case was presented to the District Court, the Regional Director of the Board issued his decision in the unit clarification case, clarifying the contractual bargaining unit by excluding "from it all employees employed by Harbor Ready Mix" (Pet. App. A-47). The Regional Director's decision recognized the common ownership of Granite and Harbor (Central Supply Company), but found that the two businesses were nonetheless separately managed and operated, and that Granite did not substantially intrude into Harbor's business affairs (Pet. App.46-47).

When this case was thereafter brought before the District Court upon cross motions for summary judgment, the Union conceded that the Board's Regional Director's decision was controlling with respect to the alter ego issue, and that the Union was precluded from grieving Granite's refusal to apply the terms of the collective bargaining agreement to Harbor's employees (Pet. A.7). The Union asserted to the District Court, however, that the unit clarification decision "does not encroach upon the contention, which is encompassed within [the Union's] grievance, that the collective bargaining agreement forbids [Granite] from establishing a new and separate entity to which it does not apply the hiring and economic provisions of the agreement" (E.R. 87; see Pet. App.7). The District Court agreed with the Union's position,